IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.3356 OF 2005

Asu Manoj Subhashchandra Sharma ...Applicant
vs.
State of Maharashtra ...Respondent

Ms Pooja Bhojane i/b Mr.Nitin Sejpal for the Applicant
Ms R.M.Gadhvi, A.P.P. for State

CORAM: A.S.OKA,J.
DATE : JUNE 23,2005.

P.C.:

1. Rule. Learned A.P.P. waives service. Considering the facts and circumstances of the case taken up forthwith for hearing.

2. This Application under Section 482 of the Code of Criminal Procedure, 1973 is filed by the Accused No.1 for challenging the order dated 6th April 2005 passed by the learned Additional Sessions Judge at Bombay. The case of the Applicant is that on 6th April 2005 P.W.No.1 Minoo was present for recording of the evidence. As one of the Advocate engaged by the Applicant was not available, the learned Additional Sessions Judge called upon the other Advocate on record who was present to cross examine the said witness. It appears that the said Advocate declined to cross examine the said witness and therefore, the learned Judge completed the recording of the evidence of the said witness. On the same day an application was made by the said Advocate stating that the other Advocate who was engaged received a call from his house that his mother was ill and therefore he was required to go back to his home. A prayer was made in the said

application to recall the said P.W.No.1. The Additional Sessions Judge rejected the said application. This order is impugned in this Application.

3. The learned Counsel for the Applicant submitted that the application for recall was on a genuine ground. On the ground which was stated in the said application, the learned Judge ought not to have rejected the said application. She submitted that the Advocate who was present was not ready to cross examine the witness and the other Advocate had made preparation for cross examining the witness.

4. The learned A.P.P. stated that with a great difficulty the prosecution had procured the presence of P.W.No.1. She stated that several efforts were required to be taken for procuring presence of the said witness as the said witness keeps on changing her address. The learned A.P.P. submitted that it will be unjust to recall the said witness.

5. The learned Counsel for the Petitioner stated that even if the trial is delayed on account of the recall of the said witness, the Applicant will not claim any relief on that ground.

6. I have considered the submissions. The Advocate who was supposed to conduct cross examination had to leave the court on the ground of which appears to be very genuine. Though the other Advocate declined to cross examine the witness, it was obvious that the said Advocate had not prepared herself to cross examine the witness. In my view, considering the ground made out in the application made by the Advocate for the

Applicant, the learned Additional Sessions Judge ought to have taken a liberal view of the matter. Considering the fact that failure to cross examine the witness will cause prejudice to the Applicant/accused, in view of the statement made by the learned Counsel for the Petitioner, which is recorded in earlier paragraph the prayer made in this Application deserves to be granted.

7. Hence I pass the following order :

i) The order dated 6th April 2005 passed by the learned Additional Sessions Judge is quashed and set aside.

ii) P.W.No.1 Minoo Ansari is ordered to be recalled for cross examination by the Advocate for the Applicant.

iii) It is made clear that as and when the P.W.No.1 appears before the Court for the purpose of cross examination, the Advocate for the Applicant will not be entitled to seek any adjournment on any unreasonable ground and will have to proceed with the cross examination.

iv) The application is disposed of in above terms.

v) The Parties and the concerned Court to act upon an authenticated copy of this order.

JUDGE